

DECEPTIVE TRADE PRACTICES AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James Cobb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to deceptive trade practices.

Highlighted Provisions:

This bill:

- ▶ adds to the type of actions that are considered a deceptive trade practice;
- ▶ increases the minimum amount of damages that may be recovered in a deceptive trade practice action;
- ▶ modifies provisions related to payment of attorney fees and costs in a deceptive trade practice action;
- ▶ requires a complainant to provide the prospective defendant notice and an opportunity to correct a deceptive trade practice before bringing a deceptive trade practice for certain damages; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-11a-3, as last amended by Laws of Utah 2010, Chapters 54, 378



28 **13-11a-4**, as enacted by Laws of Utah 1989, Chapter 205



30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **13-11a-3** is amended to read:

32 **13-11a-3. Deceptive trade practices enumerated -- Records to be kept -- Defenses.**

33 (1) [~~Deceptive~~] Except as provided in Subsections (2) and (5), deceptive trade practices
34 occur when, in the course of a person's business, vocation, or occupation [~~that~~] the person:

35 (a) passes off goods or services as those of another;

36 (b) causes likelihood of confusion or of misunderstanding as to the source,
37 sponsorship, approval, or certification of goods or services;

38 (c) causes likelihood of confusion or of misunderstanding as to affiliation, connection,
39 association with, or certification by another;

40 (d) uses deceptive representations or designations of geographic origin in connection
41 with goods or services;

42 (e) represents that goods or services have sponsorship, approval, characteristics,
43 ingredients, uses, benefits, or qualities that [~~they~~] the goods or services do not have or that the
44 goods or services are prohibited from having under other applicable law, or that a person has a
45 sponsorship, approval, status, affiliation, or connection that the person does not have;

46 (f) represents that goods are original or new if they are deteriorated, altered,
47 reconditioned, reclaimed, used, or second-hand;

48 (g) represents that goods or services are of a particular standard, quality, or grade, or
49 that goods are of a particular style or model, if they are of another;

50 (h) disparages the goods, services, or business of another by false or misleading
51 representation of fact;

52 (i) advertises goods or services or the price of goods and services with intent not to sell
53 them as advertised;

54 (j) advertises goods or services with intent not to supply a reasonable expectable public
55 demand, unless:

56 (i) the advertisement clearly and conspicuously discloses a limitation of quantity; or

57 (ii) the person issues rainchecks for the advertised goods or services;

58 (k) makes false or misleading statements of fact concerning the reasons for, existence

59 of, or amounts of price reductions, including the false use of any of the following expressions
60 in an advertisement:

- 61 (i) "going out of business";
- 62 (ii) "bankruptcy sale";
- 63 (iii) "lost our lease";
- 64 (iv) "building coming down";
- 65 (v) "forced out of business";
- 66 (vi) "final days";
- 67 (vii) "liquidation sale";
- 68 (viii) "fire sale";
- 69 (ix) "quitting business"; or
- 70 (x) an expression similar to ~~[any of]~~ the expressions in Subsections (1)(k)(i) through

71 (ix);

72 (l) makes or disseminates an express or implied claim regarding goods or services
73 without a reasonable basis for the claim or before the person has a reasonable basis for the
74 claim;

75 (m) makes a comparison between the person's own sale or discount price and a
76 competitor's nondiscounted price without clearly and conspicuously disclosing that fact;

77 ~~[(m)]~~ (n) without clearly and conspicuously disclosing the date of the price assessment
78 makes a price comparison with the goods of another based upon a price assessment performed
79 more than seven days prior to the date of the advertisement or uses in an advertisement the
80 results of a price assessment performed more than seven days prior to the date of the
81 advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio or
82 television ad, the time frame of the price assessment;

83 ~~[(n)]~~ (o) advertises or uses in a price assessment or comparison a price that is not that
84 person's own unless this fact is:

- 85 (i) clearly and conspicuously disclosed; and
- 86 (ii) the representation of the price is accurate;

87 ~~[(o)]~~ (p) represents as independent an audit, accounting, price assessment, or
88 comparison of prices of goods or services, when the audit, accounting, price assessment, or
89 comparison is not independent;

90 ~~[(p)]~~ (q) represents, in an advertisement of a reduction from the supplier's own prices,
91 that the reduction is from a regular price, when the former price is not a regular price [as
92 defined in Subsection ~~13-11a-2(14)~~];

93 ~~[(q)]~~ (r) advertises a price comparison or the result of a price assessment or comparison
94 that uses, in any way, an identified competitor's price without clearly and conspicuously
95 disclosing the identity of the price assessor and any relationship between the price assessor and
96 the supplier;

97 ~~[(r)]~~ (s) makes a price comparison between a category of the supplier's goods and the
98 same category of the goods of another, without randomly selecting the individual goods or
99 services upon whose prices the comparison is based;

100 ~~[(s)]~~ (t) makes a comparison between similar but nonidentical goods or services unless
101 the nonidentical goods or services are of essentially similar quality to the advertised goods or
102 services or the dissimilar aspects are clearly and conspicuously disclosed in the advertisements;
103 or

104 ~~[(t)]~~ (u) engages in ~~[any]~~ other conduct ~~[which]~~ that similarly creates a likelihood of
105 confusion or of misunderstanding as the conduct described in this Subsection (1).

106 (2) (a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect
107 for less than one week from the advertisement date, the advertisement shall clearly and
108 conspicuously disclose the specific time period during which the price will be in effect.

109 (b) For purposes of Subsection ~~[(1)(n);]~~ (1)(o), with respect to the price of a
110 competitor, the price shall be one at which the competitor offered the goods or services for sale
111 in the product area at the time of the price assessment, and may not be an isolated price.

112 (c) For purposes of Subsection ~~[(1)(o);]~~ (1)(p), an audit, accounting, price assessment,
113 or comparison shall be independent if the price assessor randomly selects the goods to be
114 compared, and the time and place of the comparison, and no agreement or understanding exists
115 between the supplier and the price assessor that could cause the results of the assessment to be
116 fraudulent or deceptive. The independence of an audit, accounting, or price comparison is not
117 invalidated merely because the advertiser pays a fee for the audit, accounting, or price
118 comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or
119 part-time employee of the advertiser.

120 (d) Examples of a disclosure that complies with Subsection ~~[(1)(q)]~~ (1)(r) are:

- 121 (i) "Price assessment performed by Store Z";
- 122 (ii) "Price assessment performed by a certified public accounting firm"; or
- 123 (iii) "Price assessment performed by employee of Store Y".
- 124 (e) For ~~[the]~~ purposes of Subsection ~~[(+)(r)]~~ (1)(s), goods or services are randomly
- 125 selected when the supplier has no advance knowledge of what goods and services will be
- 126 surveyed by the price assessor, and when the supplier certifies ~~[its]~~ the supplier's lack of
- 127 advance knowledge by an affidavit to be retained in the supplier's records for one year.
- 128 (f) (i) It is prima facie evidence of compliance with Subsection ~~[(+)(s)]~~ (1)(t) if:
- 129 (A) the goods compared are substantially the same size; and
- 130 (B) the goods compared are of substantially the same quality, which may include
- 131 similar models of competing brands of goods, or goods made of substantially the same
- 132 materials and made with substantially the same workmanship.
- 133 (ii) It is prima facie evidence of a deceptive comparison under this section when the
- 134 prices of brand name goods and generic goods are compared.
- 135 (3) ~~[Any]~~ A supplier who makes a comparison with a competitor's price in advertising
- 136 shall maintain for a period of one year records that disclose the factual basis for such price
- 137 comparisons and from which the validity of such claim can be established.
- 138 (4) It is a defense to ~~[any]~~ a claim of false or deceptive price representations under this
- 139 chapter that a person:
- 140 (a) has no knowledge that the represented price is not genuine; and
- 141 (b) has made reasonable efforts to determine whether the represented price is genuine.
- 142 (5) Subsections ~~[(+)(m)]~~ (1)(n) and ~~[(+)(r)]~~ (r) do not apply to price comparisons made in
- 143 catalogs in which a supplier compares the price of a single item of ~~[its]~~ the supplier's goods or
- 144 services with those of another.
- 145 (6) To prevail in an action under this chapter, a complainant need not prove
- 146 competition between the parties or actual confusion or misunderstanding.
- 147 (7) This chapter does not affect unfair trade practices otherwise actionable at common
- 148 law or under other statutes of this state.
- 149 Section 2. Section **13-11a-4** is amended to read:
- 150 **13-11a-4. Jurisdiction of district courts -- Injunctive relief -- Damages -- Attorney**
- 151 **fees -- Corrective advertising -- Notification required.**

152 (1) ~~[The]~~ A district [courts] court of this state ~~[have]~~ has jurisdiction over ~~[any]~~ a
153 supplier as to ~~[any]~~ an act or practice in this state governed by this chapter or as to ~~[any]~~ a
154 claim arising from a deceptive trade practice as ~~[defined]~~ described in this chapter.

155 (2) (a) ~~[Any]~~ Subject to Subsection (5), a person or the state may maintain an action to
156 enjoin a continuance of ~~[any]~~ an act in violation of this chapter and~~[, if injured by the act,]~~ for
157 the recovery of damages.

158 (b) (i) ~~If[, in such action,]~~ the court finds in the action that the defendant is violating or
159 has violated ~~[any of the provisions]~~ a provision of this chapter, ~~[it]~~ the court shall enjoin the
160 defendant from continuance of the violation.

161 (ii) ~~[It is not necessary that]~~ The court may enjoin the defendant under Subsection
162 (2)(b)(i) regardless of whether actual damages [be] are proven.

163 ~~[(b)]~~ (c) In addition to injunctive relief, the ~~[plaintiff]~~ complainant in the action is
164 entitled to recover from the defendant the amount of actual damages sustained or ~~[\$2,000]~~
165 \$10,000, whichever is greater.

166 ~~[(c) Costs shall be allowed to the prevailing party unless the court otherwise directs.]~~

167 (d) ~~[The court shall award attorneys' fees to the prevailing party.]~~ If the complainant
168 prevails in the action, the court shall order the defendant to pay the complainant's reasonable
169 attorney fees and costs.

170 (3) The court may order the defendant to promulgate corrective advertising by the same
171 media and with the same distribution and frequency as the advertising found to violate this
172 chapter.

173 (4) The remedies of this section are in addition to remedies otherwise available for the
174 same conduct under state or local law.

175 (5) (a) ~~[No action for injunctive relief may]~~ Except as provided in Subsection (5)(c),
176 an action may not be brought for a violation of this chapter unless the complaining person first
177 gives notice of the alleged violation to the prospective defendant and provides the prospective
178 defendant an opportunity to promulgate a correction notice by the same media as the allegedly
179 violating advertisement.

180 (b) If the prospective defendant does not promulgate a correction notice within 10 days
181 ~~[of receipt of]~~ after the day on which the defendant receives the notice, the complaining person
182 may file a lawsuit under this chapter.

183

(c) This subsection does not apply to an action for actual damages.